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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Leslie Feldman, et al.,

Plaintiffs,

and

Bernie 2016, Inc.,

Intervenor-Plaintiff,

v.

Arizona Secretary of State's Office, et al.,

Defendants,

and

Arizona Republican Party,

Intervenor-Defendants.

No. CV-16-01065-PHX-DLR

**DECLARATION OF
REPRESENTATIVE CHARLENE
FERNANDEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 Pursuant to 20 U.S.C. § 1746, I, Charlene Fernandez, declare as follows:

2 1. My name is Charlene Fernandez. I am over the age of 18, have personal
3 knowledge of the facts stated in this declaration, and can competently testify to their truth.

4 2. I am a United States citizen who is registered to vote in Maricopa County,
5 Arizona.

6 3. I am a State Representative for Arizona's Fourth Legislative District, which
7 is the state's second-largest district and incorporates large portions of western Arizona. I
8 plan to run for reelection in the November 2016 general election, and I am a Democrat.
9 Prior to my election to the Legislature, I served as the Chair of the Yuma County
10 Democratic Party.

11 4. My district spans four separate Arizona counties, including sections of
12 Yuma, Maricopa, Pinal, and Pima counties. My district also includes portions of the
13 Tohono O'odham and Cocopah Nations. Much of my district is rural. My district includes
14 over 204,000 constituents, over half of which are ethnic minorities, primarily Native
15 American and Hispanic.

16 **Presidential Preference Election**

17 5. Many of my constituents live within western portions of Maricopa County,
18 including Goodyear and Buckeye. My constituents in these areas were severely harmed
19 by the long lines and lack of polling locations in the 2016 presidential preference election.
20 Many of my constituents reported waiting in lines for upwards of three hours. Volunteers
21 for my reelection campaign visited the vote centers in Buckeye to collect signatures for
22 my nomination petition, and saw many elderly and handicapped voters leave the line
23 because they were unable to stand and wait. In fact, one of my campaign volunteers gave
24 rides home to several elderly voters whose adult children had brought them to the vote
25 center to vote, intending to give them a ride home afterwards, but once they saw the
26 length of the lines realized that they would have to go to work before their elderly parent
27 finished voting. Without the kindness and generosity of my volunteer, these elderly voters
28 would have had no choice but to go home with their children without voting.

1 6. Because of the mismanagement of the election, I worry that many of my
2 constituents will be reluctant to vote in the 2016 general election for fear of repeating the
3 same experience.

4 7. As an elected official, I take my responsibility to encourage voting and civic
5 participation seriously. I was frustrated and upset to hear that the election mismanagement
6 had disenfranchised so many of my constituents in Maricopa County.

7 **H.B. 2023**

8 8. I chaired the Yuma Democratic Party from 2006 until my election to the
9 Legislature. In that capacity, as well as in my current role, I have volunteered and staffed
10 many election cycles over the past decade. In my experience, collection and personal
11 delivery of early ballots is a key piece of a campaign's get-out-the-vote efforts. I have
12 personally delivered early ballots many times in the past in order to help others vote.

13 9. The collection and personal delivery of early ballots is particularly crucial
14 among my constituency. In areas like mine that are very rural, many voters lack home
15 mail delivery and can have trouble receiving and mailing their early ballots. For example,
16 in San Luis, a town in my district next to the Mexico-Arizona border, there is a large
17 population of rural voters who lack home mail delivery. Because many of these voters are
18 elderly and have mobility challenges, it is a common practice in this area to have one
19 neighbor pick up and drop off mail for others on their street as a neighborly service. In
20 San Luis, there is only one location to drop off and receive mail, and it is situated in a
21 hard-to-reach spot directly across a busy highway. The highway often gets choked up with
22 cars stopped at the border crossing, so driving to the post office is usually time-
23 consuming. Moreover, a voter cannot reach the post office on foot because it would be
24 unsafe to walk across the highway. Because of this untenable situation, sending and
25 receiving mail in communities like San Luis is fraught with difficulty and can take time.
26 Many San Luis residents work in Yuma, which is 23 miles away, and thus prefer to drop
27 off outgoing mail in Yuma for themselves and friends.

28 10. To help voters in this area, it has long been the practice of the Democratic

1 party and campaigns like my own, as well as unaffiliated volunteers, to offer to collect
2 and personally deliver signed, sealed ballots to the local post office or the Recorder's
3 office to relieve the voter of the time-consuming task of mailing it. Voters often
4 personally know the volunteers—who are often neighbors or friends—and are enormously
5 grateful for this help. I have personally collected and delivered the ballots of voters in past
6 elections, including in my own elections in 2012 and 2014. I estimate that my campaigns
7 have collected and personally delivered several hundred ballots in each of these elections.

8 11. Since I have been in the State House, Republicans in the Arizona
9 Legislature have repeatedly attempted to ban the collection and personal delivery of early
10 ballots. In 2013, H.B. 2305 was passed and signed into law as A.R.S. §16-1005(G). I was
11 upset about the bill and spoke out about the impact that the law would have on voters in
12 my district, particularly rural voters. I was relieved when citizen groups began collecting
13 signatures to propose a ballot referendum to repeal the law. In an effort to avoid a citizen-
14 led repeal, Republicans in the Legislature quickly repealed the law themselves and
15 determined to try again the following session when publicity died down. Accordingly, the
16 following session, the Senate passed S.B. 1339, which would have added a new A.R.S.
17 §16-1005(H), (I) and (J) to criminalize the collection and personal delivery of early
18 ballots. The bill did not pass the House and never became law. I voted against S.B. 1339.

19 12. I was frustrated and disappointed when Republicans in the Legislature again
20 proposed the bill in early 2016. H.B. 2023 went one step further than the prior iterations
21 of the same effort to make mere *possession* of the early ballot of another voter a Class 6
22 felony. I strongly opposed H. B. 2023, and spoke against the bill at length on multiple
23 occasions. Nonetheless, despite my efforts, the bill passed the Legislature on March 9,
24 2016, and was signed into law by the governor hours later.

25 13. H.B. 2023 needlessly criminalizes voters helping other voters and neighbors
26 helping neighbors. I worry very much about the wide-ranging impact on rural mail
27 practices this will engender. People may cease the long-standing and utterly harmless
28 practice of dropping off and picking up mail for their neighbors, out of fear that the mail

1 will inadvertently contain a ballot. Under H.B. 2023, a resident will not even be able to
2 collect mail for an out-of-town neighbor that they are housesitting for out of fear that the
3 mail may contain a ballot.

4 14. During legislative debates on H.B. 2023, I repeatedly spoke about the
5 impact that the bill would have on rural voters. For example, on February 4, 2016 in the
6 first meeting of the Committee of the Whole, which is a gathering of the entire legislative
7 body, I asked the body to consider voters who are forced to use P.O. boxes because they
8 do not receive home mail delivery. I asked the committee to consider voters in places like
9 San Luis.

10 15. To present the most up-to-date and detailed statistics to the legislative body,
11 I conducted independent research into the numbers of my constituents receiving home
12 mail delivery. I called every post office in my district and inquired about methods of local
13 mail delivery. In San Luis, Arizona, for example, there are 12,498 post office boxes but,
14 as mentioned previously, no home mail delivery. I also called the Tohono O'odham
15 Nation, a sovereign community within my district. I was told that there are approximately
16 1,900 members of the Tohono O'odham Nation who cannot receive home mail delivery. I
17 reported this research to my colleagues in the Committee of the Whole on February 4,
18 saying "[The Tohono O'odham postmaster] said that [the bill] would probably hurt a lot
19 of people because they don't check their boxes on a daily basis because they live miles
20 and miles away from the post office. So they check if maybe on a weekly or even a
21 biweekly basis. So that 26 days, that window of opportunity to pick up your ballot, take it
22 home and vote, has just shrunk. And a lot of times, they can't get [their ballots] back.
23 Again, they don't have mass transit. There isn't a taxi service there. So they might give it
24 to a neighbor or a friend to return it to the post office. There aren't any of those blue boxes
25 that we might see around town here in Phoenix where you can drop your mail." My
26 colleague Representative Lisa Otondo agreed with my statement, telling the Committee
27 that "your mailbox could be 45 minutes to two hours away on some of the [Native
28 American] sovereign nations."

1 16. I also spoke in support of an amendment offered to the bill by
2 Representative Clark. His offered amendment would have allowed personal delivery of
3 another's early ballot provided that the voter signed an affidavit on the outside of the
4 envelope giving permission to the friend to drop it off. As I told my colleagues, "this
5 amendment would help because people would be able to return their ballots. They do want
6 to vote. They care to vote. They vote honestly, and they would be able to give it to a
7 neighbor without penalty of getting a felony and jail time and a fine. This happens
8 throughout my district where [voters] hand their ballot off to a trusted friend, and they
9 would be more than willing to sign the ballot on behalf of themselves that they gave it to
10 their friend to return it. This amendment would help." In response to my comments,
11 representative Michelle Ugenti-Rita, the sponsor of H.B. 2023, was unmoved. She said "I
12 mean, I'm just going to speak really frank. You have got 30 days to get that ballot to the
13 post office box. You get your checks to the post office box. You pick up your kids from
14 school. You show up to work on time. You have a lot of opportunity to engage in this
15 process. If you can't get it done, that is not my problem." In the end, the Committee
16 rejected the amendment.

17 17. I also spoke against the bill in the Committee of the Whole during the Third
18 Reading. I wanted to make my objections clear for the record. I said: "District 4, which I
19 represent, is the second largest district in the state or Arizona, and in my district is
20 Somerton, and within that is the Cocopah Indian Nation. Five miles from their location is
21 the post office. They do not receive home delivery. In Somerton, they have 4,000 post
22 office boxes. 4,000. 2,500 of them are necessary. 1,500 choose to have post office boxes
23 such as people that just choose to have them or businesses. 2,500 have to have post office
24 boxes. San Luis, Arizona, is also located in my area, and they have 12,498 post office
25 boxes. There is no home delivery in San Luis, Arizona. Ajo, Arizona, is also located in
26 my district. They don't have home delivery, and there's 950 post office boxes. Gila Bend,
27 Arizona, is located in my district, and there's 1150 post office boxes. The Tohono
28 O'odham nation is also located in my district. They have 1900 rented post office boxes,
no home delivery, and there's approximately 600 cluster boxes. I'm going to look around

1 and see if anyone knows what cluster boxes are. They're located in different areas, like in
2 subdivisions. So this is what I would like in the record. This is all the people that will be
3 disenfranchised when this bill passes."

4 18. Despite my efforts, the bill passed and was signed into law mere hours later
5 by Governor Doug Ducey. The passage of H.B. 2023 severely burdens my constituents
6 because it makes it much more difficult for them to vote. The bill prohibits an entirely
7 benign and long-standing practice of rural citizens pooling resources to help ensure that
8 the community's mail is delivered and received. Additionally, H.B. 2023 burdens my
9 reelection efforts because it renders voting far more difficult for my rural constituents. It
10 binds my campaign from continuing our typical practice of helping voters cast a ballot by
11 personally delivering it. I fear that in the future my voters will be impeded in their efforts
12 to communicate with me, their elected official, through their votes.

13 **Provisional voters**

14 19. One of the most common voting problems my constituents encounter is not
15 knowing where to vote. The problem is particularly acute in my district because my
16 constituents live in four separate counties, each with its own system of assigning polling
17 locations and vote centers. Accordingly, it is extremely difficult for me to offer
18 information and education to voters in my district because of the overlapping and
19 contradictory policies regarding the proper place to vote. In Yuma County, elections are
20 run according to a vote center model, in which voters can go to any available polling
21 location. My constituents in Pima and Pinal Counties, on the other hand, must learn and
22 go to their assigned precinct or their vote will be rejected. Perhaps most confusingly, my
23 constituents in Maricopa County must learn rules anew for each election, as the county
24 toggles between vote center and precinct-based elections—even, as in 2016, during the
25 same election cycle.

26 20. As a result of the contradictory and confusing voting requirements, many of
27 my constituents have had their ballots rejected when they have inadvertently attempted to
28

1 cast a ballot in a precinct other than the one to which they are assigned in a given election.
2 When they do so, they are forced to vote a provisional ballot, which is later rejected under
3 the Secretary of State's interpretation of Arizona law.

4 21. This policy can have profound consequences on elections. I lost my election
5 in 2012 by a mere 253 votes. In Yuma County alone—not including voters in my district
6 in Pima, Pinal, and Maricopa counties—there were over 200 rejected provisional ballots
7 cast in that election, many of which were rejected because they were cast in the wrong
8 precinct. Had these provisional ballots been counted, the outcome of my race may have
9 been different.

10 22. Because of the persistent confusion regarding polling locations, I have had
11 to divert valuable time and resources away from other campaign activities to educate
12 voters about where to vote in every one of my four counties in every single election.
13 Despite my best efforts, many voters will be disenfranchised by Arizona's policies of
14 rejecting a ballot cast in the wrong precinct. This burden falls more heavily on some of
15 my constituents than others. A voter in Maricopa County, for example, was relieved of
16 this worry altogether in the 2016 presidential preference election because the election was
17 conducted on a vote center model; the same voter in Pima County would have had to
18 correctly ascertain their precinct and vote accordingly or risk being disenfranchised. The
19 inconsistent treatment of my voters harms my campaign and my efforts to represent every
20 voter in my district because it give disproportionate influence among my electorate to
21 voters who have comparatively simpler voting rules, whereas it suppresses the voices of
22 voters who vote in districts with stricter, precinct-based rules.

23 23. I fear that Arizona's wholesale rejection of provisional ballots cast in the
24 wrong precinct will, as it did in 2012, harm my reelection chances. By imposing a blanket
25 ban on provisional ballots cast in advertently in the wrong precinct, Arizona is impeding
26 my voters from having their voices heard. To address this inevitable and reasonable
27 confusion, my campaign will have to engage in even more efforts to educate voters in
28 each of the four counties in my district about the policies of their specific county, where

1 their polling location is and whether it is necessary that they only vote in their assigned
2 location.

3
4 I declare under penalty of perjury that the foregoing is true and correct.

5
6 DATED: June 03,, 2016

7
8 By: Charlene R. Fernandez
9 Representative Charlene Fernandez

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and a Notice of Electronic Filing was transmitted to counsel of record.

s/ Daniel R. Graziano